

C.A. NO. 06-99002
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | |
|---|---|
| MICHAEL ANGELO MORALES, | D.C. Nos. C 06 0219 (JF), C 06 0926 (JF) |
| Petitioner-Appellant, | DEATH PENALTY CASE |
| v. | |
| RODERICK Q. HICKMAN, Secretary of the California Department of Corrections; STEVEN ORNOSKI, Warden, San Quentin State Prison, San Quentin, CA; and DOES 1-50, | EXECUTION IMMINENT: Execution Date February 21, 2006 |
| Respondents-Appellees. | |

APPLICATION OF STAY OF EXECUTION

Emergency Motion Under Circuit Rule 27-3

David A. Senior
McBreen & Senior
1880 Century Park East, Suite 1450
Los Angeles, CA 90067
Phone: (310) 552-5300
Fax: (310) 552-1205
dsenior@mcbreensenior.com

Richard P. Steinken
Janice H. Lam
Stephanie L. Reinhart
Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
Phone: (312) 923-2938
Fax: (312) 840-7338
rsteinken@jenner.com

John R. Grele
Law Offices of John R. Grele
703 Market Street, Suite 550
San Francisco, CA 94103
Phone: (415) 348-9300
Fax: (415) 348-0364
jgrele@earthlink.net

Ginger D. Anders
Jenner & Block LLP
601 Thirteenth Street, NW
Suite 1200 South
Washington DC 20005-3823
Phone: (202) 639-6000
Fax: (202) 639-6066
ganders@jenner.com

Attorneys For Petitioner-Appellant
Michael Angelo Morales

Plaintiff, Michael Morales hereby seeks a stay of execution to review the procedures for his execution now announced by the State of California, only one half-hour before he is to be executed. Those procedures do not comply with medical standards and do not comply with the previous orders of the court. A stay of execution is requested so as to allow for review of this Court's denial of an order that Respondents comply with appropriate medical standards and the order of the Ninth Circuit. The District Court denied this request to allow for review there and in this Court.

The district Court made more fact-finding about the process without any input from Mr. Morales. It determined, in an ex parte communication with respondent's counsel and untested by plaintiff, that there would be a dedicated line for any emergency. This means that both lines must be working at all times, something that has not occurred in the past. There will be some sort of signal, rather than an oral communication, and the sedative will be readministered. But, what the Court fails to mention is that it must go through the same problematic 50 feet of line. Even if true, this does not meet the standard of practice for medical treatment of such an emergency and circumvents this Court's order.

I have just been informed from the defense witnesses that the spokesperson for the Warden stated the doctors needed further training. Respondent's counsel denies this. The court declined a telephone call to the Warden.

As outlined in the District Court papers, the procedures do not allow for medically appropriate administration of an anesthetic. First, there is no

communicating between the doctor and those administering the drugs. Second, the doctor will not be able to administer a sedative if one is necessary. Instead, someone 50 feet away, with whom the doctor cannot communicate, will do it through the very same problematic line that likely caused the trouble in the first place. This is all to avoid the doctor from having to inject a lethal sedative into Mr. Morlaes. But, the doctor volunteered to do this. It is what is required if there is an emergency. It is what this Court required as well.

After the denial of certiorari in this matter, I presented to the District Court an order to seek compliance with the previous courts interpretations of the adjustments in the protocol for execution. That was lodged with this Court. This Motion was denied. In the process, the state revealed some of what it was going to do only minutes before the execution was to take place.

Dr. Heath was made available to explain this to the court. The Court declined.

I have been informed that there will be no verbal communication between the doctor in the chamber and those on the injection team. I am informed by Dr. Heath that this does not meet the standard of care to ensure adequate sedation. The doctor must be made aware when each drug and saline flush is being administered so he can properly gauge consciousness. He will not be. Instead, they propose a series of hand or light signals.

I have been informed that an anesthesiologist with 5 grams of sodium thiopental will not be able to apply it in the existing line if there is

pancuronium in the line, and that a flush will be needed. Otherwise, the line will be blocked. Without any knowledge of whether the pancuronium is in the line, the extra sedative will not reach Mr. Morales. It must be administered very quickly and precisely to avoid the rapid onset of excruciating pain. The 50 foot line must be cleared. If the doctor is not able to do it, as is done every day in hospitals whenever there is such a medical emergency, then it will not be effective.

If the anesthesiologist in the chamber is not able to personally administer extra sedative, then it will not meet the standard of care to assure re-sedation.

San Quentin intends to have someone in another room, at least 50 feet away, administer the sedative upon direction by the anesthesiologist should there be any difficulty. This does not meet appropriate medical standards and the court order that the anesthesiologist administer whatever sedative is necessary to ensure unconsciousness if there are difficulties. It will suffer from the same problems that lead to whatever difficulty is apparent because the delivery system is too long and unreliable to get the sedative into Mr. Morales in time to avoid the massive dose of pancuronium.

The procedure is not designed to medically treat a lack of sedation in what will have to be a very quick and precise action to avoid excruciating pain. Instead, it is designed so that the doctor does not have to be the one to inject a lethal dose of sedative into a human being. The doctors should have thought of this before they volunteered for this task. They must, according to the orders here, act in a medically appropriate fashion. The lack of oral

communication (because San Quentin does not want to have to modify the chamber to allow for this) is far below the standard of care. And, the inability of the doctor to act as any anesthesiologist would in such an emergent setting is simply inadequate medically and contravenes this Court's orders.

The court was very clear that it required re-sedation in a medically appropriate fashion. Simply because San Quentin is not presently set up to accommodate this, and because the doctors do not want to have to fulfill their duties is not sufficient reason to deviate from standard practices.

A stay of execution is required to ensure a humane execution. Someone has to be there, present to monitor and able to react quickly. This is simply not the process contemplated, and it is not one that is medically appropriate.

Dated: February 20, 2006

John Grele

A handwritten signature in blue ink, appearing to read "John Grele", is written over a horizontal line. The signature is fluid and cursive.

